IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

Crl.MC.No. 805 of 2006()

CC.5072/2005 of JUDL.MAGISTRATE OF FIRST CLASS-I, ERNAKULAM

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PETITIONER: ACCUSED.

SADASIVAN MANJULA, NEW NO.4,
OLD NO. 2O. 6TH MAIN ROAD, KASTURIBAI NAGAR,
ADAYAR, CHENNAI 600 020.

BY ADV. SRI.T.B.SHAJIMON
SMT.GOVINDU P.RENUKADEVI

RESPONDENTS: COMPLAINANT.

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1. STATE OF KERALA, REPRESENTED BY THE
SUB INSPECTOR OF POLICE, KASARAGOD , REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. KOTAK MAHINDRA BANK LTD., 4TH FLOOR,
THADICKARAN CENTRE, PALARIVATTOM, COCHIN 25,
REPRESENTED BY AUTHORISED SIGNATORY,
P.B.ABHILASH.

BY PUBLIC PROSECUTOR ADV.SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 02/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No.805 Of 2006

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Dated this the 2nd day of November, 2007

ORDER

The petitioner faces indictment in a prosecution under Sec.138 of the Negotiable Instrument Act. Cognizance has already been taken. The case has been registered. The petitioner prays that the powers under Section 482 may be invoked and the proceedings may be quashed.

2. What is the reason? The learned counsel for the petitioner submits that Annexure A1 notice of demand was admittedly received by the petitioner on 12.11.05. The acknowledgment was returned to the complainant on 14.11.05. Subsequently as per Annexure A2 Demand Draft, which is acknowledged by the Bank under Annexure A2(a) on 19.11.05, the cheque amount of Rs.12,914/- was received. Annexure A3 reply notice was also sent by the petitioner to the complainant. The same has been acknowledged under Annexure A4. In spite of all these, a complaint has been filed by the complainant in December, 2005. The short contention raised by the learned counsel for the petitioner is that the amount of the cheque

having already been paid within the stipulated period the prosecution is without any justification. The same may be quashed, it is prayed.

3. Notice was ordered to the 2nd respondent. The 2nd respondent has been served. There is no appearance for the 2nd respondent.

4. The specific averments in the Crl.M.C remain uncontroverted. The documents produced satisfy me that the plea of the petitioner can be accepted. If payment has been made within the period stipulated under the proviso to Section 138 of the Negotiable Instrument Act, the prosecution launched thereafter must be held to be invalid and unsustainable. In the total absence of opposition from the respondent-complainant, I am satisfied that the prayer of the petitioner can be accepted and the proceedings can be closed:

5. This Crl.M.C is allowed. C.C.No.5072/2005 pending before the Judicial First Class Magistrate Court –I, Ernakulam against the petitioner under Section 138 of the Negotiable Instrument Act is hereby quashed.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE